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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,895	06/13/2007	Yasushi Aizawa	AIZAWA=1	4396
1444 7590 03/08/2010 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
POWERS, FIONA				
ART UNIT		PAPER NUMBER		
1626				
MAIL DATE		DELIVERY MODE		
03/08/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Advisory Action  
Before the Filing of an Appeal Brief***

**Application No.**

10/590,895

**Applicant(s)**

AIZAWA ET AL.

**Examiner**

Fiona T. Powers

**Art Unit**

1626

*—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —*

THE REPLY FILED 24 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims will be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the claims remain rejected under 35 USC 103 over Hoshaka et al. and Namba et al. and Sun et al. for the reasons given in the final rejection. Applicants state that Table 1 of the instant specification shows that the azo metal complex monomethine cyanine dyes represented by chemical formula 1 and 9 show a residual dye rate about three times greater than that of the conventional monomethine dyes with a perchlorate anion such as represented by chemical formulae 14 and 16. Applicants also state that the cyanine dye compounds of chemical formulae 23 and 25 of Kasada et al. at both trimethine cyanine dyes, not monomethine dyes and the trimethine cyanine dye with the azo metal complex anion of the chemical formula 6 had a decomposition point lower than that of the trimethine cyanine dye with the BF<sub>4</sub> counter ion of the chemical formula 4 of Kasada. In addition, applicants state that it is not known in the prior art that cyanine dye compounds comprising a cyanine cation with an azo metal complex anion have a higher decomposition point than some cyanine dyes composed of the same cyanine cation with certain non-azo metal complex anion. Therefore it is unexpected that a monomethine cyanine dye with an azo metal complex anion would have a decomposition point higher than a monomethine cyanine dye with a perchlorate anion. With regards to the comparative data shown in Table 1 of the instant specification, applicants have found an additional property residual dye rate that is greater for the monomethine cyanine dye having an azo metal complex anion as compared to the monomethine cyanine dye having the perchlorate anion. However, as shown in Table 1 of Kasada, trimethine cyanine dyes having the azo metal complex anion always have a better decomposition point than the corresponding trimethine cyanine dyes having the perchlorate anion. This is demonstrated by comparing Chemical Formula 25 (azo metal complex anion) to Chemical Formula 23 (perchlorate anion) and by comparing Chemical Formula 6 (azo metal complex anion) to Chemical Formula 12 (perchlorate anion). The results found for trimethine cyanine dyes of Kasada would be expected to be the same for monomethine cyanine dyes. One of skill in the art would have expected that the decomposition rate of a monomethine cyanine dye having an azo metal complex anion would be greater than the corresponding monomethine cyanine dye having a perchlorate anion. This is the motivation to make

/Fiona T. Powers/  
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